IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

Crl.MC.No. 3395 of 2007

(CRIME NO. 347/1990 OF THE KASARAGOD POLICE STATION)
.....

PETITIONER/ ACCUSED:

AHZAM SHAQUEEULLHA,
S/O. MOHAMMED KUNHI RHARVAY,
K.K. URAM,
THALANGARA,
KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON.

RESPONDENT/ COMPLAINANT:

STATE OF KERALA, REP. BY OF
THE SUB INSPECTOR OF POLICE,
KASARAGOD POLICE STATION, REP. BY
THE PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3395 of 2007

Dated this the 7th day of November 2007

O R D E R

The petitioner faces indictment in a prosecution for the offence punishable under Section 489C I.P.C. The offence was detected in 1990. The sessions case was registered in 2002. Consequent to non-appearance of the petitioner, the case has been transferred to the list of long pending cases in 2003. The petitioner has not appeared so far. Coercive processes issued by the learned Magistrate are chasing the petitioner. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner

surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. I may hasten to observe that I am not intended to express any opinion about the manner in which the application has to be disposed of. I intend only to say that the petition may be considered on merits and in accordance with law on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007